

1 Supreme Court noted that:

2 Stay and abeyance, if employed too frequently, has the potential
3 to undermine the[] . . .purposes [of AEDPA's statute of limitations].
4 Staying a federal habeas petition frustrates AEDPA's objective of
5 encouraging finality by allowing a petitioner to delay the resolution
6 of the federal proceedings. It also undermines AEDPA's goal of
7 streamlining habeas proceedings by decreasing a petitioner's
8 incentive to exhaust all of his claims in state court
9 prior to filing his federal petition.

10 *Id.* at 1534.

11 Here, Leyba notes that he is currently litigating the unexhausted claim in state court
12 habeas proceedings, and that he should be granted a stay pending conclusion of the state
13 court proceedings. Again, Leyba fails to mention that he filed the state habeas petition on
14 April 25, 2005, *one day prior to filing the instant federal habeas petition and one day prior to*
15 *expiration of AEDPA's statute of limitations*. Leyba does not explain his delay in instituting
16 the state habeas proceedings or his failure to raise the unexhausted claim previously in his
17 direct appeal before the state courts. Following *Rhine*, such explanation is essential to this
18 court's evaluation of the propriety of an abeyance. See *id*; see also *Pace v. DiGuglielmo*,
19 2005 WL 957194 at *5 (U.S. Sup. Ct. April 27, 2005) (reiterating holding in *Rhine*, and noting
20 that "[a] petitioner's reasonable confusion about whether a state filing would be timely will
21 ordinarily constitute 'good cause' for him to file in federal court").

CONCLUSION

22 For the reasons discussed above, Leyba is ORDERED to file a supplemental brief
23 and/or declarations demonstrating GOOD CAUSE for his request for a stay of the instant
24 petition pending state court proceedings. Leyba shall file the brief **no later than 14 days**
25 **from the date of this order**. The court will rule on Leyba's request for a stay following its
26 consideration of the supplemental brief and any supporting declarations.

IT IS SO ORDERED.

27 Dated: May 4, 2005

28 PHYLLIS J. HAMILTON
United States District Judge